

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

LUIS COLON

Petitioner,

VS.

ROBERT TASKEY, *et al.*

Respondents.

•
•

•
•
•
•

•
•

•
•

•
•

•
•

•
•

CASE NO. 1:08-CV-199

OPINION & ORDER
[Resolving Doc. No. [17](#).]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

With this opinion and order, the Court decides whether to grant the motion to stay pending appeal – filed by Respondents Commissioner Robert Taskey and the Honorable Lauren Moore (collectively, the “Respondents”) – of that portion of the previously issued writ of habeas corpus requiring re-prosecution of Petitioner Luis Colon within a reasonable period of time. [Doc. [17](#).] The Petitioner has not opposed the motion to stay pending appeal.

In its June 4, 2009 opinion and order, the Court conditionally granted Petitioner Colon's petition for a writ of habeas corpus pursuant to [28 U.S.C. § 2254](#) and ordered that the Petitioner be released from custody unless he was re-prosecuted within a reasonable period of time. On June 29, 2009, the Respondents appealed this decision to the United States Court of Appeals for the Sixth Circuit. [Doc. [16.](#)] The following day, on June 30, 2009, the Respondents moved the Court to stay pending appeal that portion of the conditional writ of habeas corpus establishing a re-prosecution deadline of a reasonable period of time tolling from the date of the June 4, 2009 opinion and order. [Doc. [17.](#)]

Case No. 1:08-CV-199
Gwin, J.

Conditional grants of habeas corpus relief “provide states with an opportunity to cure their constitutional errors.” Gentry v. Deuth, 456 F.3d 687, 692 (6th Cir. 2006); see also Hilton v. Braunskill, 481 U.S. 770, 775(1987). District courts retain jurisdiction to determine whether the state has complied with the conditions set forth in the conditional writ. Gentry, 465 F.3d at 692. Additionally, district courts have the discretion to extend the deadlines imposed by the conditional writ. See Harvest v. Castro, 531 F.3d 737, 742 (9th Cir. 2008); see also McKitrick v. Jeffreys, 255 Fed. Appx. 74, 75-76 (6th Cir. 2007).

In D’Ambrosio v. Bagley, No. 1:00-cv-2521, 2009 WL 1309900 (N.D. Ohio Apr. 27, 2009), the United States District Court for the Northern District of Ohio synthesized the existing authority and determined that a district court must evaluate the following elements in deciding whether to modify a conditional writ of habeas corpus: (1) “whether the petitioner’s actions either wholly or partially caused the delay,” id. at *18; (2) whether the state made “a good faith effort to comply with the mandate of [the] conditional writ,” id.; and (3) “all aspects of the parties’ respective responses to [the conditional writ] and . . . any relevant equitable considerations,” id.

Here, the Respondents have appealed the Court’s issuance of a conditional writ of habeas corpus to Petitioner Colon. The appeal will undoubtedly take longer than the reasonable period of time within which the Court has mandated that the state re-prosecute the Petitioner (if the state chooses to do so). Therefore, a failure to grant the stay pending appeal will force the Respondents to either forfeit the appeal or to re-prosecute the Petitioner while potentially wasting judicial and prosecutorial resources (if the Sixth Circuit should overturn the Court’s decision). The Court thus **GRANTS** the Respondents’ motion for a stay pending appeal. Further, if the Sixth Circuit upholds the Court’s grant of habeas corpus relief to Petitioner Colon and the state decides to re-prosecute the

Case No. 1:08-CV-199
Gwin, J.

Petitioner, it must do so within 45 days of the Sixth Circuit's decision.

IT IS SO ORDERED.

Dated: July 15, 2009

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE